



Advisory Opinion 12-008

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2011). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

On February 6, 2012, the Information Policy Analysis Division (IPAD) received a letter dated February 2, 2012, from Scott Wentz, of the *South Washington County Bulletin*. In his letter, Mr. Wentz asked the Commissioner to issue an advisory opinion about the South Washington County School Board's conduct under Minnesota Statutes, Chapter 13D, the Minnesota Open Meeting Law (OML). Mr. Wentz submitted an addendum to his request on February 17, 2012.

IPAD, on behalf of the Commissioner, wrote to Leslee Boyd, Board Chair, in response to Mr. Wentz's request. The purposes of this letter, dated February 17, 2012, were to inform her of Mr. Wentz's request and to ask her, members of the Board, or their attorney to provide information or support for the Board's position. On March 6, 2012, IPAD received a response, dated March 5, 2012, from Michael J. Waldspurger, attorney for the School Board.

On March 16, 2012, Mr. Wentz submitted additional information, including a copy of the School Board's regular meeting schedule, to be included as part of the record. In response, the Commissioner wrote again to Ms. Boyd, in a letter dated March 19, 2012, seeking comments on the additional information. Mr. Waldspurger responded on April 4, 2012.

A summary of the facts as Mr. Wentz provided them follows. Mr. Wentz wrote:

The Bulletin's initial request for an advisory opinion sought to clarify whether the District 833 School Board had followed the law by summarizing Superintendent Mark Porter's annual performance evaluation at a Jan. 26, 2012 regular meeting.

The School Board discussed Porter's performance review in a closed workshop Dec. 15, 2011. It then adjourned from that workshop and minutes later convened for a regular meeting, which was open to the public.

Section 13D.05, subd. 3(a) of the Open Meeting Law allows a public body to "close a meeting to evaluate the performance of an individual who is subject to its authority. The public body shall identify the individual to be evaluated prior to closing a meeting. At its next open meeting, the public body shall summarize its conclusions regarding the evaluation ..." [Emphasis omitted.]

Since the School Board convened and adjourned its Dec. 15 closed-session workshop, we believe the body's "next open meeting" occurred when the School Board convened an open, regular meeting that same evening.

If that Dec. 15 regular meeting is determined not to be the School Board's "next open meeting" following its closed session to discuss the performance evaluation, then certainly the Jan. 12 [special] meeting and workshop [which were open to the public] would have constituted the "next open meeting." Yet, as noted previously the School Board did not summarize the performance evaluation until a Jan. 26 meeting.

Issue:

Based on Mr. Wentz's opinion request, the Commissioner agreed to address the following issue:

Did the South Washington County School Board comply with Minnesota Statutes, section 13D.05, subdivision 3(a), regarding its summary of the superintendent's performance evaluation it conducted at a meeting held December 15, 2011?

Discussion:

Pursuant to the OML, public bodies hold three types of meetings: regular meetings, special meetings, and emergency meetings. Every public body is required to provide members of the public with notice of its meetings, regardless of the type of meeting. (Minnesota Statutes, section 13D.04.)

For regular meetings, the only notice requirement is that the public body keeps a schedule of its regular meetings on file at its primary offices. The schedule must include the date, time, and location of all regular meetings. (See section 13D.04, subdivision 1.)

A special meeting is any meeting, other than an emergency meeting, that is not a regularly scheduled meeting. For a special meeting, the public body shall post written notice, at least three days before the meeting, of its date, time, place, and purpose. (See section 13D.04, subdivision 2.)

As noted above, pursuant to Minnesota Statutes, section 13D.05, subdivision 3(a), a public body may meet in closed session to conduct a performance evaluation. At its next open meeting, "the body shall summarize its conclusions regarding the evaluation."

The schedule of regular School Board meetings Mr. Wentz provided contains the heading:

Workshops at 6:00 p.m.

Regular meetings at 7:00 p.m. (workshops may be added)

The December 15, 2011, Board meeting is listed on the schedule as a regular meeting; no workshop is listed on the schedule for that date.

According to the Board minutes, a quorum of the Board met in a "workshop" on December 15, 2011, which was called to order at 5:30 p.m., and adjourned at 6:55 pm. The Board then called a regular meeting to order eight minutes later, at 7:03 p.m.

In his comments to the Commissioner, Mr. Waldspurger wrote:

The Board was not required to provide additional notice that part of the regular [December 15, 2011] meeting would be closed. Nothing in the law states or implies that the absence of additional notice for a closed session converts the closed session into a “special meeting.” [Citations omitted.]

In summary, the Board was not required to summarize its conclusions regarding the superintendent’s evaluation during the open meeting that occurred on December 15, 2011. Only one “meeting” of the Board occurred on December 15, 2011. The portion of the meeting during which the Board met in closed session was referred to as a “workshop,” and the portions of the meeting during which the Board met in open session was referred to as a “regular” meeting. The fact that the District used this terminology to describe different parts of the “meeting” does not mean that two meetings were held.

While Mr. Waldspurger is correct that that the Board is not required to give additional notice that a portion of a regular meeting will be closed, the Commissioner respectfully disagrees that the December 15, 2011, closed workshop meeting was a regular meeting. As noted above, the workshop was not on the schedule of regular meetings for December 15. Furthermore, it started at 5:30 p.m., 30 minutes before regular workshops are scheduled to start. Accordingly, the workshop was a special meeting, pursuant to Minnesota Statutes, section 13D.04, subdivision 1.

Mr. Waldspurger discussed efforts the Board took to ensure compliance with the OML. He wrote:

The Board acknowledges that an inadvertent error occurred in this case. Through its Chair, the Board undertook diligent efforts to ensure compliance with the OML. Those efforts included consulting with a well regarded and experienced representative from the [Minnesota School Boards Association.] Unfortunately, in this instance, the representative made a misstatement, and the Board relied on that misstatement. As a result, the Board did not summarize its conclusions regarding the evaluation at the meeting on January 12, 2012.

The Commissioner has the following comments. First, he acknowledges that the Board sought advice to assist it in determining its obligations regarding when it needed to provide its summary of the superintendent’s performance evaluation. Second, the Board needs to review its process and procedures regarding its schedule of regular meetings, and its “workshops” in order to avoid the kind of confusion that resulted here.

Third, according to the plain language of section 13D. 05, subdivision 3(a), the “next open meeting” of a public body may be a regular, special or emergency meeting. Given the special circumstances that warrant an emergency meeting, it is likely to be unreasonable for a public body to be obliged to summarize a performance evaluation at an emergency meeting. The Legislature might want to consider amending that provision to avoid such a result.

Finally, a comment regarding the Board’s having convened and adjourned the December 15, 2011, workshop while in closed session. According to Mr. Wentz:

That Dec. 15 meeting was a closed session workshop. Board members gathered in a conference room used for closed-session meetings, convened the workshop in that room, discussed the performance evaluation and other agenda items that can be discussed in closed session, and then adjourned while still in the room closed to the public.

Pursuant to Minnesota Statutes, section 13D.01, subdivision 3, “Before closing a meeting, a public body shall state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed.” Accordingly, the Board should have convened the special “workshop” meeting in open session, stated on the record its grounds for closing the meeting and the specific subject(s) to be discussed, and then closed the meeting.

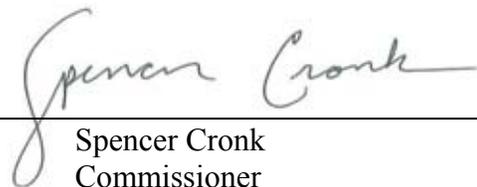
Although the OML is silent on whether a public body may adjourn a meeting in closed session, it is the Commissioner’s opinion that meetings should be adjourned or otherwise concluded in open session. Otherwise, the public cannot know if a meeting is adjourned, recessed or continued. As the issues Mr. Wentz raised illustrate, whether or not a meeting has been adjourned, rather than recessed or continued, has implications for a public body’s conduct at subsequent meetings. (See Minnesota Statutes, section 13D.05, subdivision 2(b), and section 13D.04, subdivision 4.)

Opinion:

Based on the facts and information provided, the Commissioner’s opinion on the issue Mr. Wentz raised is as follows:

The South Washington County School Board did not comply with Minnesota Statutes, section 13D.05, subdivision 3(a), regarding its summary of the superintendent’s performance evaluation it conducted at a special meeting held December 15, 2011, because the Board did not provide the summary at its “next” meeting, which was its regular meeting that immediately followed the special meeting.

Signed:



Spencer Cronk
Commissioner

Dated:

May 2, 2012